



**UNITED STATES DEPARTMENT OF COMMERCE**  
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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
05/807,385	01/15/98	CHU	063270D916

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HM11/1228

EXAMINER
TURNER, S

ART UNIT	PAPER NUMBER
1644	

DATE MAILED: 12/28/99

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

# Advisory Action

Application No.

09/007,385

Applicant(s)

Hsien-Jue

Examiner

Sharon L. Turner, Ph.D.

Group Art Unit

1644



## THE PERIOD FOR RESPONSE: [check only a) or b)]

- a) ☐ expires \_\_\_\_\_ months from the mailing date of the final rejection.
- b) ☐ expires either three months from the mailing date of the final rejection, or on the mailing date of this Advisory Action, whichever is later. In no event, however, will the statutory period for the response expire later than six months from the date of the final rejection.

Any extension of time must be obtained by filing a petition under 37 CFR 1.136(a), the proposed response and the appropriate fee. The date on which the response, the petition, and the fee have been filed is the date of the response and also the date for the purposes of determining the period of extension and the corresponding amount of the fee. Any extension fee pursuant to 37 CFR 1.17 will be calculated from the date of the originally set shortened statutory period for response or as set forth in b) above.

- ☒ Appellant's Brief is due two months from the date of the Notice of Appeal filed on 11-23-99 (or within any period for response set forth above, whichever is later). See 37 CFR 1.191(d) and 37 CFR 1.192(a).

Applicant's response to the final rejection, filed on 8-20-99 and 11/23/99 has been considered with the following effect, but is NOT deemed to place the application in condition for allowance: None

- ☒ The proposed amendment(s): The amendment filed 8/20/99
- ☒ will be entered upon filing of a Notice of Appeal and an Appeal Brief.
- ☒ will not be entered because: The amendment filed 11/23/99

- ☒ they raise new issues that would require further consideration and/or search. (See note below).
- ☐ they raise the issue of new matter. (See note below).
- ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal.
- ☐ they present additional claims without cancelling a corresponding number of finally rejected claims.

NOTE: 103(a) Gerber & Timoney is maintained. The proposed amendment filed 11/23/99 raises new issue that would require further consideration. Claims 10-15 would depend on cancelled claim 1 if the amendment was entered.

- ☒ Applicant's response has overcome the following rejection(s):

102(b) Timoney is withdrawn in view of the amendment filed 8/20/99

- ☐ Newly proposed or amended claims \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment cancelling the non-allowable claims.

- ☒ The affidavit, exhibit or request for reconsideration has been considered but does NOT place the application in condition for allowance because: the 103 rejection remains for the following reason: The prior art teaches the active components of the composition including the immunostimulant saponin, which is the preferred embodiment of the invention, and motivation for use with modified bacteria. Gerber, col. 2, lines 26-27. See\*

- ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.

- ☒ For purposes of Appeal, the status of the claims is as follows (see attached written explanation, if any):

Claims allowed: \_\_\_\_\_

Claims objected to: \_\_\_\_\_

Claims rejected: 2-5, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21

- ☐ The proposed drawing correction filed on \_\_\_\_\_ ☐ has ☐ has not been approved by the Examiner.

- ☐ Note the attached Information Disclosure Statement(s), PTO-1449, Paper No(s). \_\_\_\_\_

- ☒ Other \* Absent evidence to the contrary the components (Timoney vaccine and saponin) provide stimulation of mucosal immunity.

Duration of patent is 20 years from the date of filing of the application.

☒ Included copy of Interview Summary with John Weatherford, Paper 9 mailed 10-99

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